19 50 **File No.** B. Misc/50

Legal Deptt

B **BRANCH**

Subject:— Miscellaneous Bills

P=2
E

B. Misc/50

File No.

Gen. 194 e.

449-5

Legal Department.

It will not be possible to object to the provisions of clause 12 in the Criminal Procedure (Amendment) Bill as proposed by the Government of India. In accordance with the rules of International Law, a ruler is not subject to the jurisdiction of a criminal court in a foreign territory. The principle on which the exemption is based is that the exercise of such jurisdiction would be incompatible with the regal dignity of the ruler, that is to say, with the absolute independence of any superior authority (In re The Parlement Belge (1880) 5 P.D. 197; Mighell v. Sultan of Johore (1894) 1 Q.B. 149). Although this rule of International Law was not strictly applied in the case of Indian rulers who were under the suzerainty of the British Government, the political practice based on the rule was not to subject those rulers to the jurisdiction of ordinary criminal courts in British India but to appoint a Commission (see Ratanlal's Law of Crimes, p.7). It is true that such commissions were not ordinary criminal courts (see In re Maharaja Madhoo Sigh of Panna, I.L.R. 32 Cal,1) It is, however, open to the legislature of a country to abrogate the rules of International Law and much more so a political practice. Under section 86 of the Code of Civil Procedure, an Indian ruler can be sued in a civil court with the consent of the Central Government in certain cases. Clause 12 of the present Bill has been framed on the same lines. Immunity from the jurisdiction of ordinary courts subject to certain conditions and in certain cases can be regarded as a personal privilege of an Indian ruler and due regard has to be paid to it in any legislation of Parlia

1/11/1916
19.6

Contd.

~~to be paid to it in any legislation of~~

Parliament or State Legislature. Clause 13 of the Bill cannot be held as contraceening any of the fundamental rights provided in P Part III of the Constitution.

O.O. 30/10

Additional Secretary to Government.

S Chief Secretary.

MM

SC

223-L/30-10-50.

Office of the R.L.A.

The subject- matter of the Bill falls within the competence of Parliament in view of entry 94 in the Union List and 45 in the Concurrent List. The word "inquiry" is wide enough to include the power of setting up a Commission of Inquiry.

2. There should be no objection if the powers automatically apply to Commissions set up even by the State Govt. It is necessary that Commissions should invariably enjoy these powers. There is no special purpose in leaving to the discretion of the State Govt. the conferment of such powers by means of notification.

P.M.Lad 8/12

Remembrancer of Legal Affairs.

U.R. to H.D. No. 17491 m dated 9th December 1950.

MK

SC